

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Status of the claims

Claims 17-49 were pending in the subject application, of which claims 32-48 had been withdrawn from consideration by the Examiner. With this submission, claims 17, 18, 22, 26, 27, and 49 have been amended and claims 19, 20, and 28 have been canceled. No claims, however, have been newly added. Hence, upon entry of this paper, claims 17, 18, 21-27, and 29-49 will remain pending, of which claims 17, 18, 21-27, 29-31, and 49 will remain under active consideration.

Objections to the specification

The Examiner has objected to the spelling of “demineralisation” and “demineralising” throughout the specification, including the Abstract. Applicant has replaced these terms with “demineralization” and “demineralizing”, respectively.

The Examiner has also noted that the recitation of “7.6 g or more protein per 100” at page 8, line 17, lacks any units. The inadvertent error has been appropriately corrected.

Objections to the claims

The Examiner has objected to the spelling of “demineralising” in claims 17, 22, and 49; and the spelling of “fibre” in claim 18. These spelling of these terms have been appropriately revised.

The Examiner has also suggested that the recitation of “at least 8.2. g of intact protein per 100 ml” in the second instance in claim 17 is redundant. Applicant thanks the Examiner for his careful reading of the present application and has amended claim 17 accordingly.

Withdrawal of the objections is respectfully solicited.

Claim rejections under 35 U.S.C. § 112 first paragraph

Claims 23-24 and 26-28 are rejected under 35 U.S.C. § 112, second paragraph, as being allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The reasons for the rejections can be found in the last two paragraphs of page 3. Applicant again thanks the Examiner for noticing the inconsistencies in the claims and has amended the claims to correct same.

Claim 26 now recites “the intact protein *comprises* casein”, and the upper concentration limit of casein in claim 27 (75%) has been amended to be compatible with the lower limit (25%) of whey proteins in claim 17. Furthermore, claim 1(b) has been amended to introduce a “protein fraction,” which comprises “intact protein,” thus leaving open the inclusion of *non*-intact protein in the claimed composition. Claims 23 and 24 refer to the “protein fraction” as a whole (*i.e.*, including any such non-intact protein). Claim 28 has been canceled.

In view of these amendments, Applicant respectfully requests the withdrawal of the subject “indefiniteness” rejections

Claim rejections under 35 U.S.C. § 103

Claims 17-31 and 49 are rejected under 35 U.S.C. § 103 as being unpatentable over US 2002/0142025 (“Hageman”) in view of US 5,576,303 (“Shibuya”) and US 4,146,456 (“Taneya”). Applicant respectfully traverses these rejections.

It is axiomatic that in order to establish a *prima facie* case of obviousness, a single prior art reference or a combination of references must teach or suggest each and every element of a claimed invention. Applicant respectfully submits that the proposed combination of references does not satisfy at least this requirement. None of the cited references, either alone or in combination, teaches a nutritional composition comprising a protein fraction comprising (i) intact protein at the concentration claimed (*i.e.*, 8.5-10 g per 100 ml) and (ii) at least 70% of which is obtained from demineralized milk.

Indeed, as explained in the specification, the prior art products contained a level of intact protein typically well below 8%, because attempts at higher concentrations are wrought

with problems such as precipitation, coagulation of protein, non-emulsifying properties, creaming, gelling or high viscosity either during shelf life or during processing, especially heat treatment. Pg. 2, para. 4. The present inventors addressed this problem, in part, through the heretofore novel use of “demineralized” milk, which accounts for at least 70 wt. % of the entire protein fraction claimed. Pg. 4, ln. 32-34 (stating that “[i]t was found that such a protein fraction [from demineralized milk] allows high concentrations in a complete food concentrate without excessive viscosity problems, while combinations of caseinate products and whey protein preparations result in high viscosities.”)

In fact, Applicant respectfully submits that one skilled in the art could *not* have reasonably presaged the present advantages of demineralized milk, and certainly not from reading Taneya. As noted by the Examiner, Taneya teaches an apparatus and method for producing demineralized cow’s milk. In other words, Taneya adds nothing that was not already known to the ordinary artisan about the properties of demineralized cow’s milk, let alone the surprising “viscosity” advantages of using demineralized milk protein over protein sources (*e.g.*, casein, whey) otherwise believed to be equivalent.

For at least these reasons, Applicant respectfully submits that the present claims cannot be rendered obvious in view of the references cited. Withdrawal of the subject rejections are accordingly solicited.

Conclusion

Applicant believes that the present application is in condition for allowance. Favorable consideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extension fees to Deposit Account No. 19-0741.

Respectfully submitted,

By 

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